

NO. 22,798

UNITED STATES
COURT OF APPEALS
FOR THE NINTH CIRCUIT

THEODOSIOS THEODORES TZANTARMAS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Upon Appeal from the Judgment of the United States
District Court for the District of Oregon

RESPONDENT'S BRIEF

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FILED

JUL 18 1968

WM. B. LUCK, CLERK

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COUNTER-STATEMENT OF FACTS

Defendant, Theodosios Tzantarmas, a twenty-eight year old Greek seaman, appeared at the office of the Immigration and Naturalization Service at Portland, Oregon on February 25, 1964 (Gov. Ex. 3, p. 9), and the official Immigration file relating to him contains an entry made February 25, 1964, by Immigration Investigator Alfred G. Neumann as follows:

"The subject and his spouse came to this office and inquired as to how he might adjust his status." (Tr. 35)

Defendant was interviewed by Mr. Neumann under oath, and his statement was transcribed by Angeline Kanas, the official Immigration stenographer. As the defendant did not speak English, his statement was translated by an interpreter, Bill Asperos (Gov. Ex. 3).

The transcript of defendant's statement was introduced and received at the trial as Government Exhibit 3. It reflects that defendant was born at Thessalonica, Greece, and that on January 30, 1964, he was a seaman aboard the Greek vessel Ionian Challenger when that vessel paid a two-day call to Philadelphia, Pennsylvania (Gov. Ex. 3, p. 3).

Defendant left his ship on January 30, 1964, to see a doctor for a stomach illness (Gov. Ex. 3, p. 3). Defendant testified that he intended to depart with the ship (Gov. Ex. 3, p. 4). However, the ship departed without him, and defendant, when asked why he did not depart with the ship, answered

"Because I was ill and I was sent to the doctor."
(Gov. Ex. 3, p. 4)

Defendant testified that when he came back from the doctor, the ship was missing (Gov. Ex. 3, p. 5).

Instead of reporting to Immigration authorities in Philadelphia, defendant left Philadelphia by bus the following day and travelled directly to Portland, Oregon, arriving three and a half days later (Gov. Ex. 3, p. 5). There he made contact with Alice Paulson, a girl he had met in Portland during a previous visit and married her at Vancouver, Washington, on February 7, 1964, one week after leaving his ship (Gov. Ex. 3, p. 6).

When asked why he came to Portland, defendant replied:

"I didn't have any place much to go and I had met a young lady here in Portland while I was ill, so I decided to come here." (Gov. Ex. 3, p. 4)

When asked when he decided to get married here, defendant replied:

"As soon as I came back and reunited with this friend of mine I had met at the Good Samaritan Hospital."

The following questions were asked and answers given by defendant:

"Q Have you ever been married at any time previously?

A No.

Q Has your wife ever been married at any time previously?

A No.

Q Are you living with your wife at the present time?

A Yes.

Q Do you support your wife in any way?

A I am not working at the present." (Gov. Ex. 3, pp. 6-7)
[Emphasis added.]

The defendant's statement just quoted that he had never been previously married at any time was one of the false statements charged in the information upon which defendant was convicted in this case.

After obtaining the foregoing information from defendant,

Investigator Neumann advised the defendant on February 25, 1964 as follows:

"Your wife will be permitted to file a visa petition in order to accord you nonquota status, but you must make arrangements to secure your immigration visa from an American Consul outside the United States. Since you are married to a citizen of the United States, the District Director is disposed to allow you a reasonable length of time, say, thirty days, in which to make arrangements to leave the United States." (Gov. Ex. 3, p. 7)

Two days later, on February 27, 1964 (and twenty days after defendant's purported marriage to Alice Paulson), defendant appeared in a formal deportation hearing before Special Inquiry Officer John W. Keane in Portland. At this hearing the testimony of defendant was again transcribed by the official stenographer, Angeline Kanas, and translated

by the Interpreter, Bill Asperos (Gov. Ex. 4). The transcript of the testimony of defendant at this hearing was introduced by the Government as Government Exhibit 4. At the hearing defendant admitted he was illegally in the United States and subject to deportation (Gov. Ex. 4, p. 4). At this point, Special Inquiry Officer John W. Keane advised the defendant as follows:

"A voluntary departure is a form of relief from deportation and it is available to persons who can establish that they would be able to depart from the United States promptly to the country of their choice and pay their own way and show that they have been a person of good moral character during the last five years." (Gov. Ex. 4, p. 4)

After so advising defendant, the Inquiry Officer, Mr. Keane, asked defendant:

"Now, under the circumstances, do you desire to apply for voluntary departure?"

to which defendant answered:

"Yes, as long as it is a place which is close to the United States." (Gov. Ex. 4, p. 4)

Present with defendant in the hearing room at the time of the foregoing exchange was Alice Paulson whom defendant identified as his wife (Gov. Ex. 4, p. 5).

At that point in the hearing, Alice Paulson was asked to leave the hearing room and the defendant was examined as to his marital status.

Mr. Keane asked:

"Q How many times have you been married?

A Once, which is now.

Q And your testimony is that you were not married in Greece?

A Yes." [Emphasis added.]

The foregoing representation he had been married just one and had

not been married in Greece was the second false statement with which defendant was charged in the Information in this case.

After stating that he had never been married before, defendant made the following explanation as to his marriage to Alice Paulson: He met Alice Paulson about a year previously at a Portland hospital where she was a Nurse's Aid. He was in the hospital about a month and thereafter left for Greece where he corresponded with her frequently. Alice Paulson does not speak Greek, and defendant stated that he did not speak English "too good" (Gov. Ex. 4, p. 8). When defendant arrived at Portland during the first week in February, 1964, he did propose marriage to Alice Paulson (Gov. Ex. 4, p. 9). When asked how he had conversed with his wife, he replied, "God only knows." (Gov. Ex. 4, p. 8) Defendant stated that he had given Alice Paulson no gifts and bought her no furniture. He was, at the time of the deportation hearing, living at her apartment in Portland (Gov. Ex. 4, p. 11). He did not know the amount of rent the apartment cost. He had no money or property other than about \$120.00 (Gov. Ex. 4, p. 12).

When defendant was asked his purpose in getting married, he stated that he loved Alice Paulson and that they intended to

"proceed to whatever the law of the land said. If I could not stay in this country, I was prepared to take her to Greece with me." (Gov. Ex. 4, p. 14)

He admitted that he had not discussed any of these problems with Alice Paulson before they were married (Gov. Ex. 4, p. 14). He was evasive and refused to either admit or deny that he had told Alice Paulson that he was illegally in the country (Gov. Ex. 4, pp. 14-15).

At the deportation hearing defendant asked for information about

voluntary departure:

"WIT: I wish to request for voluntary departure.

Q How soon can you go?

A If you would give me one month--one month's time." (Gov. Ex. 4, p. 14)

At this point, Mr. Keane advised the defendant as follows:

"Now, I am not prepared to state at this time concerning your marriage. Whether your wife wishes to petition for you, whether the marriage is bona fide, is a thing I don't know yet * * * "

Following this, Alice Paulson was examined in the presence of the defendant whom she had identified as her husband. She described her meeting him at Good Samaritan Hospital the year previous where she was working as a Nurse's Aid (Gov. Ex. 4, p. 18). She said that defendant did not propose marriage to her at that time (Gov. Ex. 4, p. 19). Defendant called Alice Paulson from Philadelphia and they decided to be married three and a half days later, the day the defendant arrived in Portland (Gov. Ex. 4, p. 21). At the time they were married, the defendant had not told Alice Paulson he was illegally in the United States (Gov. Ex. 4, p. 24). When Alice Paulson was asked about prior marriages of herself and her husband, she testified as follows:

"Q Have you been married previously?

A No, I haven't.

Q To your knowledge has your husband been married previously?

A No." .[Emphasis added.]

This statement was made in the presence of defendant. (Gov. Ex. 4)

Mr. Keane then asked about defendant's obtaining money for voluntary

departure, entered findings that defendant was deportable and offered defendant an opportunity to earn transportation if he wished to have voluntary departure (Gov. Ex. 4, p. 27). The hearing officer's official findings dictated at the close of the hearing in the presence of both defendant and Alice Paulson include the following:

"There is nothing in the record to indicate that the respondent married his wife solely for the purpose of obtaining the advantage of the immigration laws. There is nothing here to indicate that the marriage was not a bona fide legal marriage. * * * A sole barrier to respondent's establishing statutory eligibility for voluntary departure is the fact that he does not have sufficient money to defray the cost of his transportation to Greece. * * *"

[Emphasis added.]

February 28, 1964, the day following the deportation hearing, Alice Paulson filled out and filed with the Portland Office of the Immigration and Naturalization Service Form I-130, a petition to modify status of alien relative for issuance of an immigrant's visa (Gov. Ex. 2(a)). In this petition, Alice Paulson stated the following:

"Number of prior marriages of spouse - None."

The petition was approved on April 13, 1964 (Gov. Ex. 2(a)).

Defendant voluntarily returned to Greece shortly after the deportation hearing, and on June 8, 1964 he filed an application for immigrant visa and alien registration with the American Embassy in Athens, Greece (Gov. Ex. 2(a)). In this application, defendant stated as follows:

"Including my present marriage, I have been married one times." (Gov. Ex. 2(a)) [Emphasis added.]

Defendant gave the name and address of his wife as Alica Tzantarmas, Portland, Oregon (Gov. Ex. 2(a)).

When asked to give the names and addresses of his children under twenty-one years of age, he stated: "None."

Defendant attached to his application for immigrant visa a copy of the petition to modify status which had been filed the day after his deportation hearing by Alice Paulson at Portland (Gov. Ex. 2(a)), in which Alice Paulson stated that defendant had no prior marriages. He also attached an affidavit from Alice Paulson in which Alice Paulson stated as follows:

"I was married to Theodosios Tzantarnas from Pyrgos, Greece, this being the first marriage for both of us." (Gov. Ex. 2(a)) [Emphasis added.]

The cost of the trip, paid for by Alice Paulson, was about \$1,200.00. Alice Paulson's yearly income as a Nurse's Aid at that time was \$3,180.40 (Gov. Ex. 2(a)).

As a result of his claim of marriage to Alice Paulson, defendant was granted a visa to return to the United States permanently as a nonquota alien. He was admitted in New York on June 22, 1964 (Gov. Ex. 2(a)).

FALSITY OF DEFENDANT'S REPRESENTATION
THAT HE WAS NOT PREVIOUSLY MARRIED

The falsity of defendant's statements that he had not been previously married is not in dispute. It is admitted that on July 10, 1955, in his home town of Thessalonica, Greece, defendant married one Theodora Mytelenois by whom he had a daughter who is now twelve years of age (Appellant's Opening Brief, pp. 1-3). In fact, defendant later obtained entry into the United States for his Greek daughter, and she is now living with him in Portland, Oregon (Appellant's Opening Brief, p. 4).

Defendant was married to his Greek wife, Theodora Mytelenois, at the time all of the events referred to above transpired; that is, at the time of his jumping ship at Philadelphia, his purported marriage to Alica Paulson, his visits to the Immigration Service at Portland, his return to Greece, and his application for entry into the United States as a nonquota alien.

Defendant's Greek divorce decree was entered at Thessalonica, Greece, on June 1, 1964: this was four months after defendant purported to marry Alice Paulson, seven days before he filed in Greece his application for nonquota status and about three weeks before he returned to the United States as the purported husband of Alice Paulson (Def. Ex. 11). A certified copy of the decree of divorce entered in Greece offered by the defendant as an exhibit at the trial shows that the divorce case came on for hearing as the result of a summons issued by Tzantarmas himself (who was the plaintiff in the divorce suit) on April 13, 1964, which was just after his return to Greece upon voluntary departure from the United States (Def. Ex. 11). The decree recited that Tzantarmas and his Greek wife were married July 10, 1955, and had one female child, nine years of age at the date of the decree (Def. Ex. 11). The decree recited that the parties lived together in Greece until June 1960, when the Greek wife took up residence with her parents. In the decree Tzantarmas was awarded a default divorce against his Greek wife, plus expenses and attorney's fees (Def. Ex. 11). Seven days later, when he filed his application for immigrant visa, defendant was asked in question 10 whether he was "married, divorced, widowed, or separated." He checked "married" and stated, "Including my present marriage, I have been married one time."

When asked the names and addresses of his children under twenty-one years of age, he stated, "None." (Gov. Ex. 2(a)).

ARGUMENT

Defendant's first assignment of error is that the Court failed to enter a finding as to whether defendant's answers were "exculpatory no" answers.

Rule 23 of the Federal Rules of Criminal Procedure requires that the Court make a "general finding" and that it

"shall in addition on request find the facts specially." [Emphasis added.]

At trial, defendant's counsel argued that defendant's claims that he was not married in Greece were "exculpatory no" statements, but at no time did he ask the Court to make a special finding on this point. In any event, since the issue presented is one of law, not fact, it would have been discretionary with the Court to enter such a finding even if requested. In the Court's Opinion dated February 24, 1968, the trial judge indicated that he had read the authorities cited by the defendant and that he decided this issue against defendant:

"I have examined the authorities cited by the parties.
The cases cited by the defendant are not in point . . ."
(Opinion of Court, p. 2)

Defendant's second assignment is that the Court erred in denying defendant's motion for judgment of acquittal. This motion was argued briefly at the time it was made and in support of it defendant's counsel urged that the false statements made by defendant were not material. The Court found that they were material (Tr. p. 30). This finding was entirely

consistent with the evidence and in line with appellate holdings on the question of the required materiality of false statements for the purpose of prosecutions under 18 U.S.C. § 1001. This Court, for example, in Brandow v. United States (C.A. 9, 1959), 268 F.2d 559-656, announced the rule that a false statement is material under 18 U.S.C. § 1001 if it is

" . . . calculated to induce agency reliance or action, irrespective of whether actual favorable agency action was, for other reasons, impossible."

In the present case defendant and Alice Paulson appeared at the Immigration Office at Portland on February 27, 1964, and represented that they were married. They both denied that defendant had ever been married previously. As a result of this representation, defendant was permitted voluntary departure to Greece, he was permitted to and did file an application for nonquota alien status, his application was allowed, and he was permitted to re-enter the United States as the purported husband of Alice Paulson, where he has resided ever since. Thus, important agency action was both requested and granted based upon defendant's false denial of his Greek marriage.

Defendant's final assignment of error is that the Court should not have received Government Exhibits 1, 5, 2 and 2(a).

Government Exhibit 1 is a certificate dated October 12, 1967 of the Bishop of Thessalonica, Greece, stating that defendant was married July 10, 1955 in the Holy Church of St. John Chrysostomos at Thessalonica to Theodora Mytilenois in accordance with the rituals of the Eastern Orthodox Church of Christ by the priest Andreas. The certificate recites that this marriage was dissolved by civil divorce decree dated June 1, 1964 (four months after defendant's marriage to Alice Paulson) by the

Thessalonica Court of First Instance and by a decree of religious divorce issued December 27, 1965 (eleven months after defendant's marriage to Alice Paulson). The certificate of the Bishop is authenticated by a certificate of James H. Norton, United States Consul at Thessalonica, Greece dated November 9, 1967. At the trial, defendant's counsel objected to the introduction of Government's Exhibit 1 upon the ground that

"It's an extract and not a record." (Tr. p. 9)

Rule 44 of the Federal Rules of Civil Procedure made applicable by Rule 27 of the Federal Rules of Criminal Procedure provides that if reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of a foreign document, the Court may

"permit the foreign official record to be evidenced by an attested summary with or without a final certification."

It is therefore clear that Government Exhibit 1 complied with the formal requirements of Civil Rule 44. Furthermore, its admission could not have prejudiced defendant as both the fact of his Greek marriage and of his Greek divorce were admitted. Reference to them may be found in Defendant's Exhibit 11. Defendant's Exhibit 11 contains a copy of defendant's Greek divorce decree and that decree itself recites the existence and date of defendant's Greek marriage.

Government Exhibit 5 is a copy of defendant's Greek divorce decree of June 1, 1964 (also introduced by defendant himself as Defendant's Exhibit 11). Defendant's counsel at the trial objected to the introduction of Government Exhibit 5 on the grounds of materiality and relevancy, and also objected that there was no showing that defendant was

the person named in the Greek divorce decree (Tr. p. 8). It is clear that the divorce decree properly authenticated by the United States Vice-Consul was admissible under Civil Rule 44 and could not have been prejudicial to defendant inasmuch as he himself introduced a copy as Defendant's Exhibit 11.

The materiality of the divorce decree lies in the fact that its date, June 1, 1964, falls some four months after defendant's purported marriage to Alice Paulson on February 7, 1964, which second marriage provided the basis for his voluntary departure and acceptance into this country as a nonquota alien.

Government Exhibit 2 is a copy of a certificate dated at Vancouver, Washington, February 7, 1964, evidencing the purported marriage between defendant and Alice Paulson. It is signed by defendant and Alice Paulson and by Alice Paulson's parents. Defendant's counsel's objection to the introduction of the marriage license was on the ground that it was a copy rather than the original. However, the fact of defendant's purported marriage to Alice Paulson at Vancouver, Washington, on February 7, 1964, is not in dispute (Tr. p. 56; Appellant's Opening Brief, p. 3). Defendant himself did not take the stand to deny the existence of this marriage or to claim that the certificate was not signed by him or by Alice Paulson. The relevance of the certificate was to show the date of defendant's purported marriage to Alice Paulson. Since this date is acknowledged, the admission of the marriage certificate could not be prejudicial. However, the very document received was furnished to Immigration authorities by defendant himself and was selected by the trial court (who heard the case without a jury) from the

official Immigration file, which file was properly identified by its custodian, Immigration Officer Peter Szambelin (Tr. pp. 3, 7).

Government Exhibit 2(a) consists of the defendant's application for immigrant visa and supporting papers which were also selected by the trial court from the Immigration file relating to defendant (Tr. p. 46). It was objected to by defendant's trial counsel on the grounds that it was "irrelevant" and was "not the best evidence" (Tr. p. 46). No claim was made that it was not in fact defendant's application. It is relevant to show that defendant's false statements to the Immigration authorities were made with fraudulent intent inasmuch as the denial of his Greek marriage and the denial of the existence of his Greek child were repeated in this visa application. The visa application is also relevant to the issue of the materiality of defendant's representation that he was not married in Greece. It in fact evidences his official request for special status based upon his alleged marriage to Alice Paulson, which application was granted.

CONCLUSION

It is clear from the record that defendant was successful in obtaining residence in the United States as the purported husband of an American citizen, Alice Paulson, through a series of brazen claims both to Immigration authorities and to the unfortunate Alice Paulson herself that he had never been married in Greece. He was in fact married to a Greek wife and had a Greek daughter at the very time he purported to marry Alice Paulson on February 7, 1964. His Greek divorce was not obtained until after he returned to Greece on voluntary departure--a return

journey paid for by Alice Paulson--to apply for nonquota residence in the United States.


The judgment of conviction entered by the trial court should be affirmed.

Respectfully submitted,


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United States Attorney
District of Oregon

RICHARD C. HELGESON
Assistant United States Attorney
Of Attorneys for Appellee

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.


RICHARD C. HELGESON
Assistant United States Attorney
Of Attorneys for Appellee

I HEREBY CERTIFY that I have made service of the foregoing Respondent's Brief on the appellant herein by depositing in the United States Post Office at Portland, Oregon, on July 17, 1968, one certified and two uncertified copies thereof, enclosed in an envelope with postage thereon prepaid, addressed to James P. Leahy, Esq., ^{CLATSOP}~~Clackamas~~ County Courthouse, Astoria, Oregon, attorney of record for appellant.


RICHARD C. HELGESON
Assistant United States Attorney
Of Attorneys for Appellee

